

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

COLE-HALL, COMPANY, INCORPORATED,

PLAINTIFF,

VERSUS

CIVIL ACTION NO. 2:95CV166-S-A

PAUL POLLARD, MARIE POLLARD,
JOHN DOE and JANE DOE, In Their
Individual and Official Capacity,
SECRETARY OF AGRICULTURE, DIRECTOR
OR RURAL ECONOMIC AND COMMUNITY
DEVELOPMENT, STATE OF MISSISSIPPI
DIRECTOR OF RURAL ECONOMIC AND COMMUNITY
DEVELOPMENT, COAHOMA COUNTY SUPERVISOR OF
RURAL AND ECONOMIC DEVELOPMENT, In Their
Individual and Official Capacity,

DEFENDANTS.

MEMORANDUM OPINION GRANTING DEFENDANTS' MOTION TO DISMISS

This cause of action is before the court on the motion of the defendants to dismiss. The defendants argue that this court lacks jurisdiction over the plaintiff's contract claim since the amount of damages exceeds \$10,000.00, and over any tort claim since the plaintiff never exhausted the administrative remedies. Additionally, the defendants alleged that the plaintiff's interference with contract claim has been specifically excluded from the limited waiver of sovereign immunity. The pro se plaintiff has filed a motion to amend his complaint.¹

¹ The court also notes that the plaintiff has filed a complaint titled: "Proposed Transferred Complaint An Extension of Interference with Business Relationship and Discriminatory Practices from Civil Number 2:95CV166-S-A" which has been filed

Facts

The plaintiff is a construction business licensed under the laws of the State of Mississippi. The business appears to be owned and operated by William Smith, the pro se representative of the plaintiff. The defendants, Paul and Marie Pollard, contracted with the plaintiff to construct a house located at Lot 7, Eastgate Subdivision No. 5, Coahoma County, Clarksdale, Mississippi. An application for the construction of this home was submitted to the local Rural Housing and Community Development Service and apparently approved. At some point, the location for the construction of the house was changed to 906 Sasse Street, Clarksdale. The plaintiff alleges that the Pollards accepted an adjusted construction price of \$40,500.00, apparently under an implied contract. At some point, the relationship between the plaintiff, as the contractor, and the Pollards went bad. The plaintiff blames the soured relationship and the resulting damages upon the defendant agencies of the federal government and two unnamed employees of those agencies. The plaintiff has alleged a claim for breach of contract and tort of interference with a business relationship. The plaintiff has requested damage in excess of \$500,000.

as another complaint under civil action number 2:96CV41-S-A. It would appear that the complaint in civil action 2:96CV41-S-A arises from the same set of facts as the civil action before the court.

Motion to Dismiss Standard

A Rule 12(b)(6) motion is not favored, and it is rarely granted. Clark v. Amoco Production Company, 794 F.2d 967, 970 (5th Cir. 1986); Sosa v. Coleman, 646 F.2d 991, 993 (5th Cir. 1981). Dismissal is never warranted because the court believes the plaintiff is unlikely to prevail on the merits. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Even if it appears an almost certainty that the facts alleged cannot be proved to support the claim, the complaint cannot be dismissed so long as the complaint states a claim. Clark, 794 F.2d at 970; Boudeloche v. Grow Chemical Coatings Corp., 728 F.2d 759, 762 (5th Cir. 1984). "To qualify for dismissal under Rule 12(b)(6), a complaint must on its face show a bar to relief." Clark, 794 F.2d at 970; see also Mahone v. Addicks Utility District, 836 F.2d 921, 926 (5th Cir. 1988); United States v. Uvalde Consolidated Independent School District, 625 F.2d 547, 549 (5th Cir. 1980). Dismissal is appropriate only when the court accepts as true all well-pled allegations of fact and, "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Thomas v. Smith, 897 F.2d 154, 156 (5th Cir. 1989) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); see Mahone, 836 F.2d at 926; McLean v. International Harvester, 817 F.2d 1214, 1217 n.3 (5th Cir 1987); Jones v. United States, 729 F.2d 326, 330 (5th Cir. 1984). While dismissal under Rule 12(b)(6) ordinarily is determined by whether

the facts alleged, if true, give rise to a cause of action, a claim may also be dismissed if a successful affirmative defense appears clearly on the face of the pleadings. Clark, 794 F.2d at 970; Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1050 (5th Cir. 1982).

Discussion

The plaintiff alleges that jurisdiction is based on 28 U.S.C. § 1346, which states:

(a) the district courts shall have original jurisdiction, concurrent with the United States Courts of Federal Claims, of:

* * * *

(2) Any other civil action or claim against the United States not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort,...

The amended complaint sues eight individuals, in their individual and official capacities, who are alleged to be employed by the defendant agencies of the federal government. There is no statutory authority to sue any of the agencies which the plaintiff has named as defendants. This court has no jurisdictional authority over the agencies which the plaintiff has named as defendants, nor over the federal employees in their official capacity. Only the United States may be named as a defendant in a

lawsuit regarding the Rural Housing program. The plaintiff has named the United States as a defendant in the amended complaint. The United States Attorney has made an appearance on behalf of the United States of America. Considering the pro se nature of these proceedings, the court will assume that it is the plaintiff's intentions to have sued the United States.

The United States District Courts only have concurrent jurisdiction with the Court of Federal Claims over nontort actions which do not exceed \$10,000.00.

It is established that the United States, as sovereign, is immune from suit except according to the terms of specific waivers of that immunity. The Tucker Act, 28 U.S.C. Section 1346, waives the sovereign immunity of the United States for contract and nontort claims. The Act provides concurrent jurisdiction in the district court and the claims court for contract claims involving damages of \$10,000.00 or less; contract claims for damages of more than \$10,000.00 are within the **exclusive** jurisdiction of the claims court.

Enplanar, Inc. v. Marsh, 829 F. Supp. 848, 851 (S.D. Miss. 1992); see also Morrison v. U.S. Farmers Home Admin., 682 F. Supp. 1387 (S.D. Miss. 1987). Since the alleged amount of damages exceeds \$10,000.00, this court does not have jurisdiction over any claims for contract violations alleged against the United States.

The plaintiff's claims against the Pollards appear to be based on conspiracy with the federal employees and state law violations. Being Mississippi residents, the court only has supplemental jurisdiction over the state law claims against the Pollards. Since this court does not have the federal question jurisdiction alleged

by the plaintiff, the court cannot have supplemental jurisdiction over any state law claims.

Tort claims against the United States can only be brought pursuant to the Federal Tort Claim Act (FTCA), 28 U.S.C. §§ 1346 and 2671. The FTCA "provides broadly that the United States will accept liability for common torts committed by its agents to the same extent and in the same manner as liability would attach to a private individual in similar circumstances." Williamson v. U.S. Dept. of Agriculture, 815 F.2d 368, 374 (5th Cir. 1987) (citing United States v. Orleans, 425 U.S. 807, 813 (1976)). As a jurisdictional prerequisite, 28 U.S.C. § 2675 requires that a claimant exhaust administrative remedies before filing suit. See Gray v. Rankin, 721 F. Supp. 115, 119 (S.D. Miss. 1989) (citing United States v. Burzynski Cancer Research Inst., 819 F.2d 1301 (5th Cir. 1987); Rise v. United States, 630 F.2d 1068 (5th Cir. 1980)). Since the plaintiff has not exhausted his administrative remedies, this court does not have jurisdiction over any tort claims against the United States.

There are exceptions to the waiver of sovereign immunity. 28 U.S.C. § 2680(h) provides:

The provisions of this chapter and section 1346(b) of this title shall not apply to--

* * * *

(h) Any claim arising out of assault, battery false imprisonment, false arrest malicious prosecution, abuse of process, libel, slander,

misrepresentation, deceit, or **interference
with contract rights**:

Id. (emphasis added). The plaintiff's claim of interference with contract against the United States is barred by the doctrine of sovereign immunity. See Williamson v. U.S. Dept. of Agriculture, 815 F.2d at 378 (claimant allegations that FmHA had interfered with contract to rent land and interfered with obtaining loans from bank were barred by sovereign immunity).

The plaintiff states in his complaint:

Count IV

41. Plaintiff lacks sufficient information at this time to allege causes of action for discriminatory practices by Defendants John Doe, Jane Doe and RECD.

In his proposed amended complaint under Count IV, the plaintiff only states "See Attachments (e)." This does not even arise to the level of minimal notice pleading. These unsupported conclusory allegations are insufficient to support constitutional claims against individuals. See Elliott v. Perez, 751 F.2d 1472, 1479 (5th Cir. 1985); Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993); Baker v. Putnal, 75 F.3d 190, 195 (5th Cir. 1996) (heightened pleading requirement valid as to individual government defendants). The plaintiff has not pled a constitutional claim for discrimination in general, much less under the heightened pleading requirements.

The court has considered the plaintiff's motion to amend his complaint. The proposed amended complaint does nothing to cure the

jurisdictional problems which the court has outlined. Accordingly, the plaintiff's motion to amend shall be denied.

An order in accordance with this memorandum opinion shall be issued.

This _____ day of March, 1996.

CHIEF JUDGE